

# DOCKET SECTION

BEFORE THE  
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

COMPLAINT ON POST E.C.S.

DOCKET NO. C99-1

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MOTION OF UNITED PARCEL SERVICE TO  
COMPEL ANSWERS TO INTERROGATORIES  
UPS/USPS-25 THROUGH UPS/USPS-33  
(June 25, 1999)

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Pursuant to Section 25(d) of the Commission's Rules of Practice, 39 C.F.R. § 3001.25(d), United Parcel Service hereby moves that the United States Postal Service be ordered to answer interrogatories UPS/USPS-25 through UPS/USPS-33 within seven days of the Presiding Officer's ruling, on the grounds set forth below.<sup>1</sup>

## ARGUMENT

A. The Postal Service's General Objection Should Be Overruled.

Once again, the Postal Service argues that discovery in a formal Commission proceeding cannot proceed "until preliminary rulings defining the procedures and scope of permissible discovery are finalized." Objection of the United States Postal Service to United Parcel Service Interrogatories UPS/USPS-25-33 (June 18, 1999) ("Postal Service Objection") at 1-2. However, as UPS has already pointed out in our response

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1. Copies of these interrogatories are attached hereto as Exhibit "A."

to the same objection made to interrogatories UPS/USPS-1 through UPS/USPS-24, the Commission's discovery rules are self-executing once a proceeding is initiated. Motion of United Parcel Service to Compel United States Postal Service to Respond to Interrogatories UPS/USPS-1 Through UPS/USPS-7 and UPS/USPS-9 Through UPS/USPS-20 (June 8, 1999), which is incorporated herein by reference, at 2-4. Those same arguments apply equally here. Indeed, in a general rate case discovery commenced before a schedule for the proceeding is adopted.

Accordingly, the Postal Service's "General Objection" should be overruled.

B. Interrogatories UPS/USPS-25 Through UPS/USPS-33 Seek Information Relevant to Assessing the Postal Service's Claim That PostECS Is a Wholly International Service, and All of the Requested Information Should Be Produced.

The Postal Service objects to all of these interrogatories on the ground that they are "irrelevant to the nonpostal or postal nature" of PostECS. Postal Service Objection at 2.<sup>2</sup> The Postal Service again forgets that it seeks to defeat the Commission's jurisdiction not only on the ground that secure e-mail is not mail, but also on the ground that PostECS does not have a domestic component that is subject to the Commission's jurisdiction. See the Postal Service's Motion to Dismiss UPS's Complaint at 16. It is the Postal Service that has interjected this issue, and unless the Postal Service is prepared to abandon this defense, these interrogatories are unquestionably relevant to that jurisdictional issue.

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2. It is hard to characterize the nature of the Postal Service's objection to interrogatory UPS/USPS-30, except to say that the objection does not appear to be lack of relevance. See Postal Service Objection at 3-4. In any event, UPS/USPS-30 is proper discovery, as we discuss below.

In particular, interrogatories UPS/USPS-25, 26, and 29 request information on (1) the extent to which the Postal Service has sought to market PostECS to international users (UPS/USPS-25) and (2) the number of Postal Service licenses that are not domestic users (UPS/USPS-26 and UPS/USPS-29).<sup>3</sup> Moreover, the Postal Service's mere statement, without more, that the information requested in UPS/USPS-25 "may" be "commercially sensitive" is not sufficient to support a claim of confidentiality. In any event, UPS has indicated a willingness to accept the information describing international sales calls under protective conditions.

Similarly, interrogatories UPS/USPS-27, 28, 30, and 31 ask for information on how the actual transmission and delivery of a PostECS message or document occurs, in order to determine whether PostECS messages are ever "delivered" outside the United States so as to constitute "mail matter conveyed between the United States and other countries." 39 U.S.C. § 407(a) (entitled "**International Postal Arrangements**").<sup>4</sup> That the Postal Service may be negotiating with others concerning when "delivery" is achieved (a fact of which UPS was unaware until the Postal Service revealed it in its Objection) does not detract from the relevance of that question to the issue whether a PostECS message sent to a foreign addressee is "conveyed between the United States and other countries." The Postal Service is free to take the same position in its

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3. The Postal Service states that interrogatory 29 "appears to be redundant" and is improper "as cumulative and burdensome." Postal Service Objection at 2. That is not a proper objection.
  4. Interrogatories 27, 28, and 30 do not call for any *technical* information on how the transmission and delivery is accomplished, as the Postal Service states (see Postal Service Objection at 3), but merely request a general description of the path the message follows to its destination.

interrogatory response as it is taking in its negotiations, or it may argue that "delivery" means different things depending on the context. In any event, if all PostECS messages, including ones sent to foreign addresses, remain on the Postal Service's U.S. server and are picked up by the addressee from that server, and if delivery occurs when the message reaches the server (as in the case of delivery of hard copy to a post office box), and the addressee is notified that it is there, then PostECS may be a wholly domestic service.

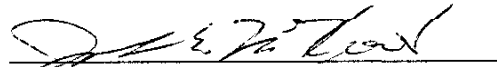
Finally, interrogatories 32 and 33 ask whether the Postal Service makes a payment to a foreign post or to another delivery contractor when a message is directed to a foreign address. If no such payment is made, then it is hard to view the transaction as other than a wholly domestic one.<sup>5</sup> Again, it is the Postal Service which has introduced the issue of the asserted international nature of PostECS, thereby making the requested information relevant; that information is certainly probative of the international or the domestic character of the service.

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5. In the case of delivery of hard copy mail sent to other countries, the Postal Service must pay a foreign post -- or, more recently, a contractor such as DHL -- in order to obtain delivery overseas.

WHEREFORE, United Parcel Service respectfully requests that the Presiding Officer order the United States Postal Service to answer interrogatories UPS/USPS-25 through UPS/USPS-33 within seven days of the Presiding Officer's order.

Respectfully submitted,



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Nicole P. Kangas  
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Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served the foregoing document on all parties to this proceeding by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.

Nicole P. Kangas  
Nicole P. Kangas

Dated: June 25, 1999  
Philadelphia, PA



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POSTAL RATE COMMISSION  
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SECOND SET OF INTERROGATORIES OF UNITED  
PARCEL SERVICE TO UNITED STATES POSTAL SERVICE  
(UPS/USPS-25 THROUGH UPS/USPS-31)  
(June 8, 1999)

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Pursuant to Section 25 of the Commission's Rules of Practice, United Parcel Service hereby serves the following interrogatories on the United States Postal Service.

UPS/USPS-25. Have any employees or representatives of the Postal Service (not including La Poste, Canada Post, or IPC, or any of their employees or agents) ever made a sales visit or sales presentation on PostE.C.S. outside of the United States? If so, provide the number of such incidents and (subject to protective conditions) a description of each of them.

UPS/USPS-26. Has the Postal Service licensed any user of PostE.C.S. that is neither (a) a United States company/citizen nor (b) located in the United States? If so, provide the number of all such users, and identify (subject to protective conditions) them and their addresses.

UPS/USPS-27. Describe exactly how a message or document sent to a foreign addressee by a PostE.C.S. user licensed by the Postal Service is transmitted from the user to the addressee.

Exhibit "A"

UPS/USPS-28. What is the location of the server from which a PostE.C.S. message or document is retrieved by the addressee in the case of a PostE.C.S. message or document sent to a foreign addressee by a PostE.C.S. user licensed by the Postal Service?

UPS/USPS-29. How many non-U.S. companies/citizens has the Postal Service licensed to use PostE.C.S.?

UPS/USPS-30. In the Postal Service's view, when is a PostE.C.S. message or document "delivered" to the addressee:

- (a) When the message or document is on the server from which the addressee may retrieve the document?
- (b) When the addressee's equipment receives notification that the message or document may be retrieved by the addressee?
- (c) When the addressee actually attempts to retrieve or retrieves the message or document?
- (d) When the addressee opens the document?
- (e) Or at some other time? If at some other time, specify when, in the Postal Service's view, the message or document is delivered.

UPS/USPS-31. (a) How many PostE.C.S. messages or documents sent by a PostE.C.S. user licensed by the Postal Service have been sent to a server or servers located outside the United States?

(b) How many PostE.C.S. messages or documents sent by a PostE.C.S. user licensed by the Postal Service have been sent to a server or servers located in the United States?

UPS/USPS-32. (a) When a PostE.C.S. user licensed by the Postal Service sends a message or a document to an addressee outside the United States (in France or Canada, e.g.), does the Postal Service make any payment to a foreign post (La Poste or Canada Post, e.g.)? If so, why?

(b) When a PostE.C.S. user licensed by the Postal Service sends a message or a document from outside the United States to an addressee located in the United States, does the Postal Service make any payment to a foreign post? If so, why?

(c) When a PostE.C.S. user licensed by the Postal Service sends a message or a document to an addressee and the message or document goes to a server that is not located in the United States, does the Postal Service make any payment to a foreign post? If so, why?

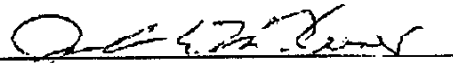
UPS/USPS-33. (a) When a PostE.C.S. user licensed by the Postal Service sends a message or a document to an addressee outside the United States (in France or Canada, e.g.), does the Postal Service make any payment to any individual or entity other than a foreign post? If so, why?

(b) When a PostE.C.S. user licensed by the Postal Service sends a message or a document from outside the United States to an addressee located in the United States, does the Postal Service make any payment to any individual or entity other than a foreign post? If so, why?

(c) When a PostE.C.S. user licensed by the Postal Service sends a message or a document to an addressee and the message or document goes to a

server that is not located in the United States, does the Postal Service make any payment to any individual or entity other than a foreign post? If so, why?

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Dated: June 8, 1999  
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